ATTORNEY FOR APPELLANT:

MICHAEL O. BOLINGER
Kokomo, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CHARLES L. DAWSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-0609-CR-802
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0506-MR-151

May 10, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Charles Dawson ("Dawson") appeals from the Howard Circuit Court's order, sentencing him to forty years pursuant to a guilty plea of Class A felony voluntary manslaughter. Dawson raises two issues on appeal:

I. Whether the trial court failed to consider and properly weigh his statement of remorse as a mitigating circumstance; and,

II. Whether his forty-year sentence is inappropriate in light of the nature of the offense and character of the offender.

We affirm.

Facts and Procedural History[1]

On June 6, 2005, sixteen-year-old Dawson allegedly threatened L.C. with a baseball bat. L.C. called J.L. and told him about the threat, and J.L., B.S., J.C., and T.A. came to 1402 North Bell to confront Dawson. Dawson was on the front porch of the house. Upon their approach, J.L. heard Dawson say, "I'm gonna whip this dude's ass." Appellant's App. p. 27. Dawson then ran around the house to the garage. When Dawson returned, he had a semi-automatic handgun. He racked the slide of the gun and approached T.A. T.A. was unarmed, and he extended his hands with his palms out while saying, "What you gonna do? Shoot me?" Id. Dawson then shot T.A. in the chest. T.A. died at St. Joseph Hospital.

After Dawson shot T.A., his gun jammed. While Dawson was trying to fix the gun, he shot himself in the left leg. Patrick Mooney ("Mooney"), a witness who had heard the shot, found Dawson sitting in his vehicle. Dawson told Mooney that he had

[1] We remind Appellant's Counsel that Indiana Appellate Rule 51(C) (2007) states that "[a]ll pages of the Appendix shall be numbered at the bottom consecutively, without obscuring the Transcript page numbers, regardless of the number of volumes the Appendix requires." We advise Appellant's counsel to number the pages of appendices in future filings with this court.

shot himself and had tried to kill himself. Mooney then took the handgun from the left side of the driver's seat and placed it under a tree in a nearby yard. Then Dawson took off, at a high rate of speed with squealing tires. His vehicle struck a parked truck and pushed the truck into another parked vehicle.

On June 7, 2005, the State charged Dawson with felony murder. On August 24, 2006, the State added the charge of Class A felony voluntary manslaughter, and both parties asked the trial court to set the matter for a plea and sentencing hearing. On August 31, 2006, Dawson pleaded guilty to voluntary manslaughter, and the State dismissed the murder charge. The court found as mitigating circumstances Dawson's guilty plea, his youth, and his expression of remorse. The court found as aggravating circumstances that Dawson had been adjudicated delinquent in 2004, that the juvenile system's informal probation had not dissuaded him from committing crime, that on the day of the offense Dawson had used marijuana and cocaine, and that the victim was only fifteen years old. Finding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced Dawson to forty years, enhancing his sentence by ten years. Dawson now appeals. Additional facts will be added as necessary.

I. Statement of Remorse

Dawson first contends that the trial court abused its discretion in failing to find his statement of remorse as a mitigating circumstance and failing to assign more mitigating weight to this factor. When our court is faced with a challenge to an enhanced sentence, we must "determine whether the trial court issued a sentencing statement that (1) identified all significant mitigating and aggravating circumstances; (2) stated the specific

reason why each circumstance is determined to be mitigating or aggravating; and (3) articulated the court's evaluation and balancing of the circumstances." Payne v. State, 838 N.E.2d 503, 506 (Ind. Ct. App. 2005), trans. denied.

The trial court is not required to find mitigating factors, and its decisions will be revised only for an abuse of discretion. O'Neill v. State, 719 N.E.2d 1243, 1244 (Ind. 1999). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Smith v. State, 730 N.E.2d 705, 708 (Ind. 2000). While the trial court is not required to find mitigating circumstances, it may not ignore mitigating circumstances that are significant and clearly supported by the record. Echols v. State, 722 N.E.2d 805, 808 (Ind. 2000). The failure to find a mitigating circumstance clearly supported by the record may imply that the trial court overlooked the circumstance. Sipple v. State, 788 N.E.2d 473, 480 (Ind. Ct. App. 2003), trans. denied.

In this case, the trial court's sentencing order enumerated Dawson's remorse as a mitigating circumstance. However, Dawson claims that this factor was overlooked because "[n]o mention of [Dawson's] remorse was made in the court's comments in open court at the sentencing." Br. of Appellant at 7. We are not convinced by Dawson's argument as Dawson's remorse was specifically identified as a mitigating factor in the trial court's sentencing order. Therefore, this circumstance was not merely overlooked.

Furthermore, we are not convinced that the trial court abused its discretion in failing to assign more mitigating weight to Dawson's statement of remorse read at the sentencing hearing. The trial court was not obligated to weigh or credit this mitigating factor as Dawson requested. Highbaugh v. State, 773 N.E.2d 247, 252 (Ind. 2002).

Moreover, there was conflicting evidence presented regarding Dawson's remorse. Dawson first told the police that the gun *accidentally* went off and shot T.A., and that he did not intend to shoot anyone, but merely "pulled the gun out to get them to leave [him] alone." Appellant's App. p. 5. The adult probation officer found that this statement to the police was excusatory and "lacking in remorse." Id. at 6. At the guilty plea hearing, which occurred more than one year after he was charged, Dawson admitted that he "did do it out of anger." Tr. p. 5. Given Dawson's reluctance to accept responsibility for this heinous crime, we conclude that the trial court did not abuse its discretion in failing to assign more mitigating weight to Dawson's statement of remorse.

II. Appropriate Sentence

Dawson further contends that his sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana's appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2006); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied.

On the date Dawson committed the crime, Indiana Code section 35-50-2-4 provided that "[a] person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years." Dawson was sentenced to forty years, and therefore, he did not receive the maximum sentence for a Class A felony, but a sentence enhanced beyond the advisory sentence by ten years.

Regarding Dawson's character, we find it relevant that Dawson has a lengthy juvenile criminal history. The presentence investigation report found that Dawson was first referred to probation when he was nine years old for battery. As a juvenile, he was arrested four different times for battery, which were either referred to probation or declined prosecution. He was also convicted of theft, a Class D felony if committed by an adult, and was ordered to complete a personal development program. At fifteen years old, Dawson was arrested for carrying a handgun without a permit, which was dismissed. In 2004, he was placed on probation for possession of marijuana. In fact, Dawson admitted to using marijuana daily since the time he was fourteen years old. Dawson also admitted to using cocaine frequently over the past year and that he had twice tried ecstasy.

Dawson has demonstrated a history of violent behavior and drug abuse. As the trial court noted, "A 16 year old, high on drugs, with access to a firearm and angry is a lethal combination." Tr. p. 45. Most importantly, the juvenile system's informal probation programs have apparently had little deterrent effect on Dawson's delinquent behavior, which has continuously escalated.

Regarding the nature of the offense, we find it significant that Dawson left the scene of a verbal confrontation to procure a semi-automatic handgun and then shoot an unarmed fifteen-year-old in the chest. Afterwards, he fled the scene in a vehicle, ran into a parked truck and pushed the truck into another parked vehicle. Dawson then initially lied to the police, telling them that the gun had accidentally fired. We further note that Dawson was first charged with murder, and the presentence investigation report

recommended sentencing Dawson to the maximum sentence of sixty-five years for murder. The State dismissed the murder charge in return for Dawson pleading guilty to voluntary manslaughter, and therefore Dawson received a significant benefit in return for his guilty plea. Given these facts, we conclude that Dawson's enhanced sentence of forty years is not inappropriate in light of the nature of the offense and character of the offender.

Conclusion

The trial court did not abuse its discretion in failing to identify or assign appropriate weight to Dawson's statement of remorse. Dawson's enhanced forty-year sentence is appropriate in light of the nature of the offense and character of the offender.

Affirmed.

NAJAM, J., and MAY, J., concur.